IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3659 OF 2005

Shri Baban Anandrao Jadhav ..Petitioner.

Versus

Smt. Anubai Ganpati Patil & Ors. ..Respondents.

Mr. N.V. Bandiwadekar for the Petitioner.

Mr. S.S. Redekar for the Respondents 1 to 3.

CORAM : S. A. BOBDE, J.

DATED : 14TH JULY, 2005.

P.C.:

1. Rule, returnable forthwith.

2. Mr. Redekar waives service of rule for the Respondents.

3. Heard by consent.

4. It appears that the petitioner has been

negligent in filing his written statement; as a result of this, the court has directed that the suit shall proceed without written statement. It appears that on two occasions, he applied for setting aside the order of proceeding without written statement, which was granted subject to the payment of costs, which he did not deposit. Therefore, eventually the trial court has rejected the petitioner's application not to proceed without written statement. Normally, this would not be an appropriate case for interference. However, in view of uncontroverted averments in paragraph 12 of the petition to the effect that the Advocate did not inform the petitioner about the order of -No Written Statement and the direction of the court to deposit costs and having regard to the principle underlying the decision of the Supreme Court in AIR 1981 Supreme Court 1400 in the case of Rafiq & Anr. vs. Munshilal & Anr., I consider it appropriate in the interest of justice to set aside the impugned order on condition that the petitioner pays costs in the sum of Rs. 5000/- to the respondent within two weeks from today.

5. Petition is allowed, subject to the aforesaid condition.

14.07.2005 (S.A.BOBDE,J.)